

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. PERMIT NO.)
57-07681 IN THE NAME OF SUNRISE)
ALPHA WATER CO., INC)
_____)

**AMENDED
PRELIMINARY ORDER**

On November 7, 2000, the hearing officer for the Idaho Department of Water Resources ("Department") issued a Preliminary Order in connection with the above captioned matter. On November 20, 2000, the applicant filed a Petition for Reconsideration ("petition") with the hearing officer. In response to the petition, the hearing officer has changed condition of Approval 7. as shown in this Amended Preliminary Order.

Based upon his understanding of the law and the facts in this matter, the hearing officer makes the following Findings of Fact, Conclusions of Law and Amended Preliminary Order:

This matter having come before the Idaho Department of Water Resources (the "Department") in the form of a protested application for permit and the Department having held a conference and a hearing in the matter, the hearing officer enters the following Findings of Fact, Conclusions of Law and Preliminary Order:

FINDINGS OF FACT

1. On December 13, 1999, Sunrise Alpha Water Co, Inc. ("applicant") represented by Les Moncrief and Lauri Moncrief, officers of the company, submitted Application for Permit No. 57-07681 ("application") to the Department proposing the diversion of 0.14 cubic feet per second ("cfs") of groundwater to be used year-round for in-house domestic purposes in 9 homes. The proposed point of diversion and place of use are located in the NW1/4NW1/4 Section 21, T1N, R3W, B.M.

(Note: The "1/4" designations will be omitted from subsequent legal descriptions in this order).

2. The Department published notice of the application which was subsequently protested by Steve Givens.

3. On November 1, 2000, the Department conducted a hearing in the matter. The applicant was present and was represented by Les Moncrief and Lauri Moncrief. The protestant was present and represented himself.

4. The issue identified by the protestant is that the proposed use will reduce the quantity of water under existing water rights. The other five potential issues that can be considered in connection with a protested application for permit were not issues of concern to the protestant but must be considered by the Department.

5. Exhibits offered and accepted as a part of the record are as follows:

- a. Applicant's Exhibit 1 - Idaho Department of Water Resources Adjudication Claim Profile Reports - 57-04032, 57-07236E and 57-10842
- b. Applicant's Exhibit 2 - Warranty Deed from Virgil L. Cuff and Elizabeth L. Cuff to Joseph A Moyle and Lynn S. Moyle - August 20, 1999
- c. Applicant's Exhibit 3 - Tax Inquiry for 1999 to Joseph A. Moyle & Lynn S. Moyle
- d. Applicant's Exhibit 4 - Section 42-227, Idaho Code
- e. Applicant's Exhibit 5 - Correspondence dated May 25, 2000 from Steve Givens
- f. Applicant's Exhibit 6 - Summary of ground Water Monitoring
- g. Applicant's Exhibit 7 - Basin 57 Ground Water Hydrographs
- h. Applicant's Exhibit 8 - Email from Bill Bonnichsen to Lauri Moncrief
- i. Applicant's Exhibit 9 - Compiled Well Data from IDWR Well Logs
- j. Applicant's Exhibit 10 - Graph of Well Logs – Sections 16, 20 and 21, T1N, R3W, B.M.
- k. Applicant's Exhibit 11 - Locations of Wells
- l. Applicant's Exhibit 12 - Letter dated October 25, 2000 to Les Moncrief from John Welhan
- m. Applicant's Exhibit 13 - Past and Current Proposed Ground Water Usage
- n. Applicant's Exhibit 14 - Graph showing Maximum Instantaneous Water Requirements for Domestic Use
- o. Applicant's Exhibit 15 - Table No. 7 - List of Non-Irrigation Requirements
- p. Applicant's Exhibit 16 - Letter dated October 23, 2000 to Glen Saxton from Barbara Blaker

6. In December 1999, Les Moncrief, who is a licensed well driller, constructed the well sought for use in the application. The well is about 60 feet deep and was cased with an 8-inch diameter casing. The applicant test pumped the well for 8 hours at 30 gallons per minute. The drawdown in the well was 2 feet. Water temperature in the well was measured at 61 degrees Fahrenheit.

7. The applicant seeks in-house water use only for 9 homes, since irrigation water is available from the Opaline Irrigation District.

8. The protestant is concerned that use of water by the applicant might adversely affect the amount of water in a cold water well located about 1/4 mile distant from the applicant's well. The protestant stated that water is not available in his well for a period of 30 to 90 days during the fall of most years. The protestant does not divert water from the well but uses the cold water in the well as a medium to cool hot water through heat transfer from hot water lines immersed in the cold water well. The

protestant is not sure whether past or present use of water from the well is represented by a water right.

CONCLUSIONS OF LAW

1. Section 42-203A, Idaho Code, provides in pertinent part as follows:
In all applications whether protested or not protested where the proposed use is such (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or (c) where it appears to the satisfaction of the director that such application is not made in good faith, is made for delay or speculative purposes, or (d) that the applicant has not sufficient financial resources with which to complete the work involved therein, or (e) that it will conflict with the local public interest, where the local public interest is defined as the affairs of the people in the area directly affected by the proposed use, or (f) that it is contrary to conservation of water resources within the state of Idaho; the director of the department of water resources may reject such application and refuse issuance of a permit therefor... .
2. Use of water as proposed in the application will not reduce the quantity of water under existing water rights.
3. The water supply itself is sufficient for the purposes intended.
4. The application is made in good faith and not for delay or speculative purposes.
5. The applicant has sufficient financial resources with which to complete the project.
6. The application does not conflict with the local public interest.
7. The application is not contrary to the conservation of water resources within Idaho.
8. The Department should approve the application with certain conditions.

ORDER

IT IS THEREFORE, hereby ORDERED that Application for Permit No. 57-07681 in the name of Sunrise Alpha Water Co. Inc. is **APPROVED** subject to the following conditions:

1. Proof of application of water to beneficial use shall be submitted on or before **November 1, 2001**.

2. Subject to all prior water rights.
3. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.
4. The Director retains jurisdiction to require the right holder to provide purchased or leased natural flow or stored water to offset depletion of Lower Snake River flows if needed for salmon migration purposes. The amount of water required to be released into the Snake River or tributary, if needed for this purpose, will be determined by the Director based upon the reduction in flow caused by the use of water pursuant to this permit.
5. The issuance of this right does not grant any right-of-way or easement across the land of another.
6. Domestic use is for 9 homes and does not include lawn, garden, landscape or other types of irrigation.
7. Place of use is located within lots 11, 13, 14, 15 and 16, Block 5 and lots 2, 3, 4 and 5, Block 6, Sunrise Sky Park Subdivision.
8. Failure of the right holder to comply with any condition of approval is cause to rescind approval of this permit.

Signed this 21st day of November , 2000.

____Signed____
L. GLEN SAXTON
Hearing Officer